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ment of the trial court, and set aside the verdict of the jury, if the court can see from the whole record that even under correct instructions a different verdict could not have been rightly found, or that the exceptant could not have been prejudiced by the erroneous instruction.

3. STREET RAILWAYS—*Street Crossing—Right of foot passenger—Crowding Cars.* The people of a city have the same right to pass along an intersecting street, on foot or in vehicles, as a street car has to go across; and it is gross negligence in a street railway company to so over-crowd and load down its cars with passengers beyond any reasonable or proper limit as not to be able to stop them readily as they approach intersecting streets, if necessity requires it. If from such crowding and consequent inability to stop a collision occurs, resulting in injury to a passenger, the company is liable for such injury.

4. DAMAGES—*Personal injuries—Excessive verdict.* There is no legal measure of damages for a personal injury to a human being, and the consequent pain and anguish; and the verdict of a jury will not be set aside on the ground of excessive damages, unless the damage be so great as to indicate that the jury was actuated by partiality or prejudice.

NEW YORK, PHIL. & NORFOLK R. CO. v. THOMAS.—Decided at Richmond, February 20, 1896.—*Riely, J.*:

1. INSTRUCTIONS ON PART OF FACTS.—An instruction which singles out certain facts which a part only of the evidence tends to prove, and ignores all the other facts which the remainder of the evidence tends to prove, and which are equally important in leading the jury to a correct conclusion, is misleading and should not be given.

2. INSTRUCTIONS—*Evidence to support.* When there is any evidence tending to prove a material fact in a case, the party in whose favor it is, has the right, without regard to the amount of the evidence, to have the court instruct the jury as to the law arising upon the fact or facts which the evidence tends to prove, and leave them to find whether or not the evidence is sufficient to establish the fact it was introduced to prove.

3. RAILROADS—*Negligence—Combustible matter on right of way.* It is negligence on the part of a railroad company to permit combustible matter to accumulate on its right of way, where it is liable to be easily ignited from its passing engines, and thus communicated to the property of adjacent proprietors; and if such adjacent proprietor sustain damages from fire thus communicated the company is liable therefor.

4. INSTRUCTIONS—*How interpreted—Objections in Appellate Court.* Instructions are to be interpreted in the light of the evidence in the case, and it is not to be presumed that the jury considered other evidence not introduced in the cause. If the instruction was applicable to evidence introduced in the trial court without exception, an objection to the instruction on that ground only, cannot be made for the first time in the Appellate Court.

5. RAILROADS—*Damage by communicated fires—Other fires—Negligence or defective machinery.* In an action to recover damages of a railroad company resulting from fires communicated by its engines, where evidence has been received, without

objection, of other fires communicated by the engines of said company prior and subsequent to the fire in question, it is not error to instruct the jury that they may consider such evidence for the purpose of determining whether or not there was negligence on the part of the company's employees, or defects in its engines, and also for the purpose of showing a negligent habit of the officers and agents of such company.

NEGLIGENCE—*Question of fact.* Negligence is a question of fact peculiarly within the province of the jury, and in the case at bar, the verdict of the jury finding the defendant guilty of negligence, is approved.

LEMON AND OTHERS V. HERBERT, TRUSTEE, AND OTHERS—Decided at Richmond, March 12, 1896.—*Riely, J:*

1. **CHANCERY PRACTICE—*Valid decree, though erroneous, cannot be collaterally assailed—Adequate remedy at law.*** A final decree of a court of equity having jurisdiction of the parties, and a general jurisdiction over equitable rights, interests, and remedies, is not null and void merely because the complainant had a full, adequate and complete remedy at law; and however erroneous such decree may be, it is conclusive until vacated or reversed, and cannot be collaterally assailed. Objections to a decree which merely show that it is erroneous, but fall short of showing that it is void, cannot be made in a collateral proceeding.

2. **REMOVAL OF CAUSES—*Consent—Infants may consent by guardian ad litem.*** The consent of all parties to the removal of a cause from one court having jurisdiction thereof to another court of like jurisdiction is equivalent to a motion by such parties for such removal, and the guardian *ad litem* of infant parties may give such consent for the infants.

JAMES' EX'OR AND OTHERS V. LIFE.—Decided at Richmond, March 19, 1896.—*Cardwell, J:*

1. **CHANCERY JURISDICTION—*Bill to enforce judgment—Revival of Judgment.*** A bill in equity may be maintained against the personal representative of a decedent and his devisees or heirs at law to subject the real estate of the decedent to the payment of a judgment recovered against him in his lifetime, without first reviving such judgment at law.

2. **CHANCERY JURISDICTION—*Bill to enforce a judgment—Within what time it may be filed—What time excluded.*** The right to file a bill in equity to enforce a judgment lien is co-extensive as to time with the right to sue out an execution on such judgment. And, in computing the time within which an execution is to be sued out, the time between January 1, 1869, and March 29, 1871, is excluded by express statutory provision. Sec. 3577 Code.

3. **PRESUMPTION OF PAYMENT—*Limitation.*** The mere efflux of time, short of twenty years, will not raise a presumption of payment of a debt not barred by the statute. In the case at bar, neither the lapse of time, the condition of the parties, the circumstances surrounding them, nor their relations to each other justify such presumption.